IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 748 OF 2003

Rahiman M. Shaikh & Ors. ..Appellants

versus

Smt. Roshanbi A. Shaikh & ors. ..Respondents

Mr. A. A. Kumbhakoni for the Appellants.

Mr. P. K. Dhakephalkar for the Respondents.

CORAM : D. G. DESHPANDE,J.

DATE : 9TH JUNE, 2005

P.C. :

1. Heard.

2. Plaintiffs had earlier filed a suit for partition in respect of landed property then subsequent suit came to be filed in respect of the house property. Counsel for the appellants therefore contends that the substantial question of law involved in this case is whether the second suit for partition is maintainable. According to him such a suit is not maintainable at all and provisions of Order II Rule 2 of the Code of Civil Procedure have not been properly appreciated by both the courts below.

3. Mr.Dhakephalkar for the respondents drew my attention to paragraph 16 of the judgment of the appellate court and contended that cause of action

for both the suits was different. Paragraph 16 of the judgment clearly show that the cause of action in both the suits were different. Order II Rule 2 of the Code of Civil Procedure is as under:

> **"2. Suit to include the whole claim.-** (1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.
>
> (2) **Relinquishment of part of claim.-** Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.
>
> (3) **Omission to sue for one of several reliefs.-** A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs, but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted."

From the aforesaid provision, it will be clear that every suit should include the whole claim which the plaintiff is entitled to in respect of the cause of action. This refers to a particular cause of action and therefore in respect of that cause of action all prayers must be made in the plaint but subsequent cause of action on a total different cause of action giving right to the plaintiffs to file another suit is not at all affected by this provisions. The second suit was not at all barred. Therefore, there is no substantial question of law.

4. Mr. Kumbhakoni for the appellants also contended that the trial court observed that Order II Rule 2 does not apply to Muslims, it is correct in that regard, but that does not affect the ultimate result. No merit in this appeal. The same is dismissed along with the Civil application.

9.06.2005 (D.G. DESHPANDE, J.)